

REMARKS

The Official Action of December 22, 2008 and the art cited therein have been carefully considered. The amendments and remarks herein are considered to be responsive thereto.

I. Status of the Claims

After entry of these amendments, claims 37-43 are pending.

II. Rejections under 35 USC § 112

Claims 37, 38, and 43 are rejected under 35 USC 112, first paragraph, for failing to comply with the written description requirement. The Examiner states that the amended definitions of "Ra" and "Rb" introduce new matter. The definition of Ra and Rb have been amended to address the Examiner concerns.

III. Rejections under 35 USC § 103(a)

A. Statements of Common Ownership as Required by 35 USC 103(c)

The Examiner maintained the 35 USC 103(a) rejections over US 6380203 B1, US 6235741 B1, US 6245759 B1, and US 20020041880 A1 stating that the common ownership statement provided by Applicants was not in the form of a declaration. However, a review of the MPEP section 706.02(l)(2), specifically paragraph II entitled "Evidence Required to Establish Common Ownership," reveals that Applicants need only make a "clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) statement that at the time the application of the invention was made it was owned by Merck. There is no requirement that a declaration be submitted. In light of this the Examiner is respectfully requested to withdraw the 35 USC 103(a) rejections as Applicants have complied with the procedure for establishing common ownership.

The common ownership statements are made again herein for completeness purposes.

The following statements are made as outlined in MPEP 706.02(1)(2) in order to disqualify references as prior art under 35 USC 103(c).

a. Claims 37-39 and 43 are rejected under 35 USC 103(a) as being unpatentable over Bilodeau et al. (US 6380203 B1). Present application 10/540,784 and U.S. Patent No. 6,380,203 were, at the time the invention of Application 10/540,784 was made, owned by Merck & Co., Inc.

b. Claims 37-39 and 43 are rejected under 35 USC 103(a) as being unpatentable over Bilodeau et al. (US 6235741 B1). Present application 10/540,784 and U.S. Patent No. 6,235,741 were, at the time the invention of Application 10/540,784 was made, owned by Merck & Co., Inc.

c. Claims 37, 38, and 43 are rejected under 35 USC 103(a) as being unpatentable over Bilodeau et al. (US 6245759 B1). Present application 10/540,784 and U.S. Patent No. 6,245,759 were, at the time the invention of Application 10/540,784 was made, owned by Merck & Co., Inc.

d. Claims 37, 38, and 43 are rejected under 35 USC 103(a) as being unpatentable over DeFeo-Jones et al. (US 20020041880 A1). Present application 10/540,784 and U.S. Patent Application Publication 2002/0041880 A1 were, at the time the invention of Application 10/540,784 was made, owned by Merck & Co., Inc.

B. Rejection based on Bellec et al.

Applicants would like to thank the Examiner for withdrawing the Bellec et al., rejection.

IV. Double Patenting

The Examiner maintains the obviousness-type double patenting rejection of claims 37, 38 and 43 over US 6235741 and US 6380203. To expedite a notice of allowance Applicants herewith submit a terminal disclaimer for both.

V. Conclusion

In light of the amendments and remarks herein Applicants believe the claims are in condition for allowance. The Examiner is respectfully requested withdraw

the objections and 35 USC sections 112, and 103(a), and to contact the undersigned at the number below if this would expedite the allowance.

Respectfully submitted,

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